

## Secured Transactions

### CHAPTER 25. SAN MANUEL SECURED TRANSACTIONS ORDINANCE<sup>1</sup>

#### **SMTC 25.1 Short Title**

This Chapter shall be known and cited as the San Manuel Secured Transactions Ordinance of 2004 ("Ordinance").

#### **SMTC 25.2 Purpose**

This Ordinance is adopted by the San Manuel Band of Mission Indians, a federally recognized Indian tribe ("Tribe"), acting through its General Council in the exercise of its inherent sovereign power to enact ordinances and otherwise safeguard and provide for the health and welfare of the Tribe and its members.

The purpose of this Ordinance is to recognize that under the law of the Tribe, except as otherwise provided in this Ordinance, secured parties shall have the same rights with respect to collateral in which a security interest is created and governed by this Ordinance that would exist if all aspects of the security interest (including but not limited to its creation, attachment, perfection and priority) had been governed by the State UCC, as defined below, without regard to the choice of law principles set forth therein.

#### **SMTC 25.3 Scope**

a. This Ordinance shall apply only with respect to those security interests that (i) are granted by a Tribal Party, and (ii) are expressly stated to be subject to and governed by this Ordinance by resolution or ordinance of the General Council.

b. Once applicable to any security interest, this Ordinance shall remain in effect with respect to such security interest so long as the obligations secured thereby have not been fully and finally discharged or otherwise satisfied, except that this Ordinance may be amended in any manner that is not adverse to any person then secured by a security interest at the time of such amendment.

#### **SMTC 25.4 Definitions**

- a. In this Ordinance the following terms have the following meanings:
- i. **“Collateral”** means “collateral” as defined in the State UCC, including Pledged Revenues.
  - ii. **“Pledged Revenues”** means a Tribal Party’s earnings, income and revenues, and the rights to receive the foregoing, whether in the form of money, deposit accounts, investments or other assets, and the proceeds thereof, in which such Tribal Party has granted a security

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<sup>1</sup>Adopted by the General Council on September 14, 2004. Amended by the General Council on October 13, 2009, and July 12, 2016.

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interest in a writing signed by such Tribal Party from the sale, lease or transfer of any interest in real property.

iii. **“State”** means the State of California.

iv. **“State UCC”** means the Uniform Commercial Code as enacted and in effect from time to time in the State.

v. **“Tribal Party”** means the San Manuel Band of Mission Indians ("Tribe"), and any subdivision, agency, department, board, committee, commission, instrumentality, subdivision, or entity wholly-owned or wholly-controlled, directly or indirectly, by the Tribe, including the San Manuel Entertainment Authority, their successors and assigns.

b. Any undefined terms that are defined in the State UCC are used in this Ordinance with the meanings that apply in the State UCC.

### **SMTC 25.5 Laws Applicable to Security Interests**

a. Except as provided in this Section, the rights and duties of any party with respect to any security interest covered by this Ordinance shall be governed (i) by the law of any state of the United States expressly so designated by the parties in any document governing such security interest, or (ii) barring such designation, by the State UCC, including the choice of law principles set forth therein, except to the extent that such choice of law principles would apply the law of the Tribe (in which case the State UCC shall govern, without regard to the choice of law principles set forth therein).

b. The perfection, effect of perfection or non-perfection and priority of any security interest governed by this Ordinance shall be determined in accordance with the State UCC, without regard to the choice of law principles set forth therein.

c. Notwithstanding any other provision of the State UCC or this Ordinance to the contrary, a security interest granted in Pledged Revenues shall be perfected upon the granting thereof by the applicable Tribal Party in a writing executed by that Tribal Party, and a filing of a financing statement with respect to such security interest in the same manner as a security interest in equipment is perfected.

d. For purposes of this Ordinance and the application of the State UCC, including Sections 9-301 through 9-307 thereof, each Tribal Party shall be located in the State.

e. Parties to a transaction subject to this Ordinance shall agree to resolve disputes in the San Manuel Tribal Court. Such disputes shall be adjudicated in accordance with this Ordinance, Tribal Law, and court rules governing judicial proceedings.

### **SMTC 25.6 Effective Date and Repealer**

a. To the extent any provision of any law, ordinance, resolution, motion or any other action of any Tribal Party heretofore taken is in conflict with any provision of this Ordinance, the provision of this Ordinance shall supersede and the conflicting provision shall be and hereby is repealed as it shall apply to a security interest governed by this Ordinance.

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- b. This Ordinance is effective upon the date of its enactment by the General Council.
- c. To the extent lawful, any prior security interest in Pledged Revenues purported to be created by a Tribal Party is hereby annulled and of no further force or effect.

### **SMTC 25.7 Sovereign Immunity**

Nothing herein shall be deemed to constitute a waiver of the Tribe's sovereign immunity from unconsented suit, which is hereby expressly reserved.